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KENYA OLD HABITS DIE HARD

Rights Abuses Follow Renewed Foreign Aid Commitments

We find no consolation in the praise from the World Bank or the International Monetary Fund (IMF) for Kenya...too many of our people are living in fear; it would seem there is no law, no justice, no protection, except for the powerful.

*- Pastoral letter issued by the Catholic Bishops
Nairobi, April 1995*

INTRODUCTION

Since December 1994, there has been a notable deterioration in the human rights situation in Kenya, evidenced by President Daniel arap Moi's crackdown against human rights activists, opposition politicians and internally displaced persons. The escalation of human rights abuses has come in the wake of new commitments of foreign aid, pledged without strong human rights conditions, at the last consultative group meeting of Kenya's donors in December 1994. Since 1991, when aid to Kenya was suspended on economic and human rights grounds, donors have failed to sustain pressure for the respect of human rights, in large part due to the justification that the government had taken significant steps towards economic reform.

The 1991 decision to suspend new pledges of aid followed increasing domestic and international discontent with the government's lack of accountability and its dismal human rights record. Within one month of that suspension of the aid that had reached over one billion dollars a year, the government legalized a multi-party system and released political detainees.

In December 1992, President Moi was returned to office in the country's first multi-party elections. President Moi's party, the Kenya African National Union (KANU), gained one hundred of the 188 elected seats in parliament. The election victory was based on only thirty-six percent of the popular vote, and owed much to election irregularities and divisions within the political opposition.¹ While steps were taken to tolerate greater freedom of expression and association for some time, government repression and intimidation have remained a significant factor of Kenyan public life, notwithstanding a multi-party system. Prior to each donor consultative meeting, government abuses temporarily subside.

In November 1993, the donor consultative group meeting pledged new commitments, but did caution, however, that the

Kenyan government would need to make continued efforts in the area of governance before the promised aid would be released. In January 1994, Kenya's creditors rescheduled US \$700 million of Kenya's debt.

In December 1994, Kenya's donors pledged new commitments of US \$800 million for 1995. For the first time since 1991, donors did not express strong concern about continuing human rights abuses. In fact, a statement by the donors announcing the aid noted "the positive developments over the past year with respect to the democratization process, ethnic tensions and human rights issues," despite strong evidence to the contrary.

This resumption of aid, without human rights cautions, seems to have emboldened the government. The Moi government appears to perceive the new aid commitments as tacit consent from the international community to revert to past practices of repression. This report highlights the abuses which have taken place since December 1994. President Moi's barrages against his critics have become more pronounced: there have been forced relocations of victims of government-sponsored ethnic violence; bannings and attacks on organizations and publications that have criticized the government; and harassment of opposition politicians. President Moi has warned that any criticism of the government will be considered treason. These tactics-attacking the independent press and non-governmental community-are reminiscent of the period before 1991.

In particular, the government's continued persecution of certain ethnic groups is a potentially disastrous policy. A joint Kenyan government and United Nations Development Programme (UNDP) project to resettle the estimated 300,000 people displaced by the "ethnic" violence is failing. Since the program began almost two years ago, there has been little reintegration. The government has consistently manipulated and undermined its implementing partner, UNDP, forestalling genuine resettlement efforts.

There are strong grounds for concern that the international community has used the wrong benchmarks to measure the government's tolerance of political pluralism. Donors appear willing to countenance harassment and intimidation of government critics as long as the government continues to liberalize the economy and retain a multi-party system in name. However, this approach is short-sighted. Long-term economic stability cannot be ensured without government accountability and respect for the rule of law.

The human rights situation in Kenya continues to warrant sustained international attention. Multi-partyism has not been accompanied by the requisite institutional and legal reform essential to genuine democratization. In response to international and domestic criticism, the government periodically suspends its harassment of critics or adopts different methods. Given that the human rights situation is deteriorating, renewed international attention could improve the situation.

The 1991 decision to withhold aid on human rights grounds illustrated that preventative diplomacy can contribute to restoring government accountability. Tangible improvements for Kenyans resulted from the 1991 donor conditionality. Without renewed human rights conditionality on the part of all Kenya's donors in 1995, it is likely that the human rights situation will continue to worsen.

Donors and the World Bank will meet again on July 24, 1995, in order to discuss Kenya's progress. At that meeting, there will be an opportunity to revisit the December 1994 decision which praised the government's human rights record and made new aid pledges without human rights conditions. Kenya's donors should use this opportunity to issue strong and unequivocal condemnation of recent events and to link all non-humanitarian aid to the Kenyan government's performance on good governance and human rights criteria. At a minimum, donors should require that the Kenyan government cease its policy of ethnic persecution and prosecute those responsible for the violence and for the forcible removal of the displaced. The Kenyan government should also cease its harassment of the political opposition and the independent press; lift the banning orders against organizations and magazines; and institute the requisite institutional

and legal reform essential to genuine democratization by repealing repressive legislation and permitting judicial independence. The continued release of aid in the face of this government crackdown will only send the message to President Moi that repression does indeed pay.

ETHNIC PERSECUTION

The Moi government is continuing to pursue a calculated policy against ethnic groups associated with the political opposition.² Since 1991, the government has been responsible for unleashing terror, provoking displacement, and expelling certain ethnic groups from the Rift Valley Province for political and economic gains.³ Since the 1992 election, the frequency of the large-scale "ethnic" attacks has diminished steadily, but, periodic incidents continue. However, despite the fact that the pre-election scale of violence has abated somewhat, the persecution continues. Most of the hundreds of thousands of internally displaced people have been unable to resettle on their land because of continuing incidents of violence against those who do try to return and the fear of renewed violence. Government authorities continue to harass the displaced and those who attempt to assist them. Forced removals of some of the displaced in December 1994 give credence to the repeated statements by high-ranking KANU officials declaring that the displaced will never be allowed to return to their land.

In 1991, when the government was forced to legalize a multiparty system, President Moi claimed that the return of his country to multiparty rule would threaten the stability of the state by polarizing the country on ethnic lines. It appears that President Moi's claim was an accurate statement of the government's own strategy: in 1993, Human Rights Watch/Africa estimated that 1,500 people had died in "tribal clashes" and approximately 300,000 people had been displaced. These attacks generally pitted the ethnic groups which control the KANU government, the Kalenjin and Maasai,⁴ against the Kikuyu, Luo and Luhya,⁵ groups associated with the political opposition.

Despite Moi's pronouncements, the violence has not been a spontaneous reaction to the reintroduction of multiparty politics. Although ethnicity has been crucial in the politics of the Kenyan state and was central to the violence, the clashes were deliberately instigated and manipulated by KANU politicians anxious to retain their hold on power in the face of mounting internal and external pressure for change in government.

Human rights abuses instigated or condoned by the government have been central to the violence. A series of damning reports, including an exhaustive document prepared by a KANU parliamentary committee, have charged the government with complicity in the violence and documented the involvement of close associates of President Moi in deliberately provoking attacks. However, the government has never taken steps to investigate those who were alleged to be directing the violence, and the attackers themselves have enjoyed legal and political impunity for their acts.⁶

During 1993, clashes were concentrated in Trans Nzoia and Bungoma districts of Western Province; in Uasin Gishu and Nakuru districts of the Rift Valley Province; and spread to the previously unaffected area of Narok in the south of the Rift Valley, when Kikuyu farms in the region were attacked by Maasais.⁷ From September 1993 to March 1995, the government designated three of the worst-hit areas-Burnt Forest, Molo and Londiani-"security operation zones" giving the government extraordinary powers to limit access to the region and to enforce law and order within the area.⁸ These measures effectively created a news black-out, preventing journalists, human rights monitors and others from reporting on what was happening in the areas. However, the security zones did not prevent outbreaks of violence. In 1994, widespread violence affected the Burnt Forest and Molo areas in the Rift Valley Province, resulting in the displacement of yet another 25,000-30,000 people.⁹ In January 1995, an attack took place against over 600 displaced persons who had taken refuge at Kericho Thessalia Mission in Thessalia and at Kagecha, near Naivasha, ten Kikuyus were killed in an attack by Maasais.¹⁰ In February, a total of twenty-two houses were destroyed by arsonists in Burnt Forest, an area which has repeatedly been attacked by Kalenjin groups.¹¹ In March 1995, four people were killed and an estimated 800 families were displaced by Kalenjin attackers.¹²

Although large-scale attacks have decreased, acts of harassment and intimidation continue against those who attempt to return to their land. Hundreds of thousands of displaced remain unable to return to their land-some after more than three years. Reports of threats or actual violence have deterred the bulk of the displaced from returning to their homes, despite a joint United Nations Development Program (UNDP) and Kenyan government reintegration plan. Most remain at church compounds or abandoned buildings, often in destitute and overcrowded conditions. Moreover, government authorities continue to systematically harass the displaced victims and relief officials involved with feeding the displaced. The forced dispersals of the displaced in December 1994 were the most blatant example of such harassment.

The government has capitalized on the unaddressed issues of land ownership and tenure, dating back to the colonial period, between those pastoral ethnic groups who were originally ousted from the Rift Valley Province area by the British colonial government and subsequent squatter labor which settled on the land following independence.¹³ The clashes drew on these competing claims in order to inflame violence among certain ethnic groups. Land has been a crucial source of dispute between different ethnic groups. Yet no systematic effort has been made to address the shortage of arable land that faces a growing population. Instead, the Moi government has manipulated these pressing problems to polarize ethnic sentiments to its political and economic advantage.

The government's motive for instigating the violence appears multifold: first, to prove its assertion that multiparty politics would lead to tribal chaos; second, to destabilize areas from which the political opposition would have been able to garner considerable support and to punish ethnic groups who have supported the political opposition, namely the Kikuyu, Luo and Luhya; third, to reward and empower the Kalenjin and Maasai communities by allowing its members to occupy or buy land illegally in the Rift Valley Province, gaining its political allegiance and strengthening its economic base.

Finally, the violence plays a part in renewed calls by Kalenjin and Maasai politicians for the introduction of *majimboism*, a federal system based on ethnicity.¹⁴ A majimbo system would mandate that only members of those pastoral groups originally on the land before colonialism such as the Kalenjin and Maasai would have political and economic power in the Rift Valley Province. If implemented, the introduction of majimboism in this form would mean the resettlement of millions of members of other ethnic groups who have settled there since the 1920s and legally purchased land since the 1950s. The Rift Valley Province has the largest number of parliamentary seats and is the base of Kenya's agricultural economy.

Although a long-term solution to the conflicts that have developed will eventually require greater equity in the distribution of land and other resources among ethnic groups, the evidence is clear that the immediate cause of Kenya's post-1991 "tribal clashes" has been the deliberate manipulation of existing tensions by government ministers, the differential application of the criminal justice system, and, above all, the organized provocation of violence by Kalenjin and Maasai members of the government anxious to prevent the installation of a government in which they would have a lesser part.

The Kenya Government/UNDP Resettlement Program

It has been almost two years since the United Nations Development Program (UNDP) and the Kenyan government announced a joint program in October 1993 for returning the displaced to their farms. Yet, most of the displaced have not been able to return to their land. In 1993, the UNDP/Kenyan government program proposed a \$20 million plan for reconciliation and reintegration.¹⁵ The program was intended to resettle those displaced by the violence since 1991, estimated by UNDP at the time of the report at about 225,000 (and by 1994, at 260,000). The announcement of the UNDP program coincided with concerns expressed by Kenya's donors about the ethnic violence at the 1993 Consultative Group meeting to discuss Kenya's aid. At that meeting in Paris on November 22 and 23, 1993, the chairman's closing statement expressed that "bilateral donors were disturbed by the ethnic clashes [and]...underlined the

paramount importance of strengthened Government action to defuse the underlying tensions and deal with unrest through even handed application of the law."

Appeals were made to the international community to fund the UNDP/Kenyan government program. However, many donors were slow to respond, privately citing reservations about the Kenyan government's commitment to ending the clashes. Reservations were also expressed by the church and local relief organizations who had been providing relief to the displaced. While church and local relief organizations working with the displaced have welcomed the efforts begun by UNDP, they have always had misgivings about the Kenyan government's commitment to the program. The success of the Kenyan government/UNDP proposal is ultimately contingent on the active involvement of the government to facilitate UNDP's efforts and to provide security.

The misgivings that local relief and church organizations have expressed to Human Rights Watch about the UNDP/Kenyan government program have been borne out. The Kenyan government has consistently used the UNDP program as a basis for asserting to the international community that the violence has ended and that the situation has been normalized, while continuing to pursue its policy of ethnic persecution. At a London Investors' Conference in November 1994, the reason cited by bilateral and multilateral donors for why a successful meeting could be held on investment in Kenya was the government's improvement in the handling of communities affected by ethnic violence.¹⁶ In the closing statement of the Consultative Meeting in Paris on December 15 and 16, 1994, the chairman noted that there had been "positive developments" with respect to ethnic tensions and human rights issues.

However, the Kenyan government has never undertaken a sustained program of action or sought a political solution to end the violence. In fact, it has actively obstructed genuine resettlement by consistently harassing the displaced and those who try to assist the displaced-with little protest from UNDP. In February 1995, the government barred the Naivasha Catholic parish and three opposition members of parliament from delivering food to the clash victims. Previously, the government had confiscated checks for over K.shs 200,000 [approximately U.S. \$4,000] given by the Catholic Diocese of Ngong in school fees to assist the displaced children in the Maela area.¹⁷ UNDP has been extremely reluctant to criticize the Kenyan government when its efforts have been obstructed by the Kenyan government, reportedly terming such incidents of harassment as "temporary hiccups" in the program.¹⁸

It is difficult to assess how many people have returned to their land or been settled elsewhere through the UNDP program. However, UNDP has been accused of inflating the estimates of how many people its program has been responsible for reintegrating. In a September 1994 draft report to the National Coordinating Committee for Displaced Persons a UNDP consultant stated:

[f]or the whole of western Kenya, an optimistic estimate might be that one-third of the affected population is now back on its land and in the process of rebuilding its houses... A much larger proportion, perhaps as much as half of the total displaced in western Kenya, are in a transitional state of return.¹⁹

This figure was repeated by UNDP representative David Whaley at a National Committee for Displaced Persons meeting.²⁰

The assertion by UNDP that its program had resettled approximately one-third of the displaced created an uproar among local relief and church organizations. Advocates for the displaced accused UNDP and the government of understating the number of people who remained uprooted. UNDP estimated that 160,000 remained displaced, 30 percent fewer than the 240,000 estimated by the local relief organizations.²¹ Following these protests, the statement was recanted and UNDP accused the Kenyan press of manipulating the figure and quoting it out of context.²² One foreign diplomat told Human Rights Watch:

David Whaley might claim that the Kenyan press made up that figure and quoted him wrongly. However, I was at one of the meetings where he said it. I was there. I heard him say it.²³

While Human Rights Watch is not in the position to verify the exact number of the resettled, it does appear from interviews with local and international relief workers who have been feeding the displaced that the UNDP estimate is greatly inflated.

Reporting on events pertaining to the conflict has become increasingly difficult for journalists following negative international publicity of the government's role and inaction in bringing an end to this ethnic persecution. There have been numerous charges of government harassment of the press for reporting on the clashes including arrests without charge, the bringing of patently political charges such as subversion, police interrogation and the illegal impounding of issues which carry articles on the clashes. Others attempting to investigate allegations by clash victims or bring them together to discuss their problems have been charged with sedition or harassed in other ways. By contrast, inflammatory statements by government ministers have gone uncensored. There has been a more general failure to investigate reports of the involvement or collusion of government officials in the violence, at all levels of responsibility.

Forced Expulsions of the Displaced from Rift Valley Province

In late December 1994, the government acted on its threats to expel certain "alien" ethnic groups from the Rift Valley. High-ranking government officials have continuously called for the expulsion of all ethnic groups from the Rift Valley, except those pastoral groups-Kalenjins, Maasai, Turkana and Samburu-that were on the land before colonialism. We are concerned that the government's forced removal of certain ethnic groups from the Rift Valley Province represents systemic discrimination, and is consistent with the growing calls by Kalenjin and Maasai politicians for the introduction of *majimboism*.

An example was a government move against a predominantly Kikuyu community which had already been displaced and living in a camp.²⁴ In the early hours of the morning on December 24, 1994, administration police and KANU youth wingers raided the camp of Maela where approximately 30,000 people, predominantly of the Kikuyu ethnic group, had sought refuge since October 1993. The police destroyed the camp and the belongings of the displaced were looted and burned. Without notice, government officials razed the camp and forcibly transported some 2,000 of the residents to Central Province (the area regarded as the "traditional" home of the Kikuyus), and proceeded to question them about their ethnicity and ancestral background. Families were separated as they were herded into trucks. Each truck was crammed with approximately one hundred people. Initially, the displaced were not provided with food or shelter. The forced relocation was done late at night without notification or the participation of UNDP, the government's implementing partner. The trucks used for the forcible removal charged their petrol expenses to a UNDP account (which was later closed by UNDP once this was discovered). The remaining residents were left without shelter.

UNDP and Medecins sans Frontieres were denied access to Maela, despite the fact that the UNDP officer had a letter from the office of the president allowing entry into Maela. Food, water and other supplies were cut off by the government, creating acute shortages for the remaining families at Maela. An American priest, Father John Kaiser, who had been working for the Catholic Diocese in Maela, was put under house arrest when he protested the action. Father Kaiser was then taken to nearby Naivasha and warned that if he would be deported if he attempted to enter Maela again. UNDP was informed that this resettlement was in keeping with the President's promise to resettle the genuine victims of Maela before Christmas. The "genuine" victims, as defined by the government, were relocated to a government farm near Maela. According to UNDP the land on which these Maela displacees were dumped is unproductive. Water, shelter and sanitation facilities are non-existent. The others, considered "non-genuine" displacees, were dumped at various points in the traditionally Kikuyu heartland, Central Province.

According to the same sources, most of the displaced who were taken to Central Province were left to fend for themselves at different locations: Ol Kalau, Ndaragwa, Moindabi and Kirigiti Stadium. At Ndaragwa, the displaced were left by the side of the road with no shelter and practically no belongings. At Ol Kalou, they were left between the railway line and the main road. At Kiambu, they were dropped at Kirigiti stadium. Some had plastic sheeting which they used for shelter. Several days later, the camp at Kirigiti was destroyed by police, leaving the twice displaced once again without shelter. At approximately 3:00 am trucks drove through the stadium gates and police ordered the displaced not to move, threatening that they would suffer consequences since the stadium was surrounded by police. The displaced were ordered to line up and were loaded on the trucks without being informed of where they were to be taken. Those who resisted were beaten and forcibly thrown into the trucks. Human Rights Watch is not aware of where they were dropped.

The government denied any harassment or beatings. Samuel Oreta, the Kiambu District Commissioner was quoted as saying that any allegations that the government had used such force were false claims by the displaced to "get sympathy and donations from the public."²⁵ The government has begun to insist on the dispersal of other displaced camps in the Rift Valley Province without providing alternative accommodation or assistance.

As far as Human Rights Watch can determine, none of those forcibly displaced to Central Province have been returned to the area they came from in Rift Valley Province. Moreover, the government officials responsible for the brutality against the displaced have not been disciplined.

The continued uncertainty for the displaced and the government's callous brutality towards them raises serious concerns about the likelihood of the displaced ever returning to their farms in Rift Valley Province. The Kenyan government has repeatedly demonstrated its lack of commitment to the UNDP program. Human Rights Watch believes that UNDP is damaging its credibility by being an implementing partner in a program in which blatant human rights violations are taking place, such as brutality against displaced persons, forced relocations and dispersal of camps. The fact that UNDP is not informed by the Kenyan government when such actions take place, indicates that it is not an equal partner in this project. President Moi and his associates have used the UNDP involvement as evidence of resettlement, while continuing ethnic persecution. The UNDP must insist on certain preconditions for the continuation of the program in order to retain its own credibility and for the effectiveness of the project.

SILENCING OF ORGANIZATIONS AND THE MEDIA

In February 1995, two independent organizations, the Center for Law and Research International (Clarion) and the Mwangaza Trust were banned by the government.

Clarion, a research group headed by a Nairobi University professor and officially registered under the Nongovernmental Organizations (NGO) Act, held a seminar on January 17-18, 1995, and published a study describing widespread government corruption. The report detailed government complicity in high-level corruption. On January 20, Clarion was notified that it had violated the terms of the NGO Act by its activities which were "most injurious to the government's interest as you have exposed to ridicule and contempt the image of the Kenyan government thus compromising its position to discharge its public duties."²⁶ On February 17, Clarion received a letter stating that it had been de-registered. In November 1994, at a London investor's meeting, President Moi had publicly declared his government's commitment to ending corruption on the grounds that it had deterred new aid and investment to Kenya.²⁷ The government's pledge, however, is seriously undermined by its actions, which are clearly intended to silence any discussion of government corruption.

Mwangaza Trust, launched in September 1994, was formed for the purpose of promoting "educational, research and sound economic management of legal and cultural policies in Kenya." Since it is a trust and not an NGO, it does not

need to register with the government. The major focus of its activity has been a campaign for constitutional and legal reform. On January 18, Mwangaza was notified that it had engaged in activities "which require it to be registered under the Societies and NGO Act," although the letter did not specify what these activities were. In April, a High Court judge ruled that the trust could continue to operate so long as it pursued the objectives for which it was registered.²⁸ However, Mwangaza's publication, *Nuru*, which was published in eight Kenyan languages, was impounded by the police.

Another banning involved the magazine *Inooro*, which has been published by the Muranga Diocese of the Catholic Church for many years. On February 23, the Minister of State J. Kalweo signed an order declaring the magazine "a prohibited publication" under Section 52 of the Penal Code. This section was used frequently by the government in the past to ban independent journals, including the *Nairobi Law Monthly*. The church has been publicly critical of the government's handling of corruption and ethnic violence. On February 27, one Catholic priest from Muranga diocese and three seminarians were arrested and charged with possession of a proscribed publication, *Inooro*.²⁹

Human Rights Watch is also very disturbed by a series of attacks against the Legal Advice Center (LAC). In late February, gunmen entered the offices, dumped gasoline on the floor, and attempted to set the place on fire. In another incident, a petrol bomb was thrown at the office building. LAC was attacked again on March 15, when two security guards were shot and injured and a petrol bomb caused fire and smoke damage to the office. There have been six attacks in total and in all cases, the attackers have escaped. Although there is no current indication of who is responsible for the attacks against LAC, the well-established pattern of attacks on government critics by unidentified assailants raises concerns that the LAC is being targeted for its work to stem government abuses.

Another violent attack by unknown assailants took place on February 1, when the office of the outspoken magazine *Finance* was firebombed. *Finance* has been repeatedly targeted by the government in the past including the jailing of its editor, the impounding of the magazine and violent attacks on its offices. Two armed men entered the *Finance* offices at 6:00 pm, assaulted an employee, Ruth Gathiga, doused the floor with petrol and set the offices on fire. The entire reception area, which contained furniture and documents, was destroyed by the fire.

The media continues to come under attack by the government. The government continues to hold a monopoly on all broadcast media and the Minister of Information has announced that the government will not grant any licences for private broadcasting. Journalists continue to come under attack for writing articles critical of the government. In January 1995, two *Daily Nation* reporters were dismissed in circumstances suggesting government pressures. Alex Cege had written a story alleging that a new office building had been sold to a government minister at considerably less than its market value, and Julius Mokaya was dismissed after quoting lawyers as saying that the Attorney-General was the main stumbling block to the rewriting of the constitution. On January 16, two other *Daily Nation* journalists were arrested outside the residence of the Kiambu District Commissioner Samuel Oreta in connection with a story on the drug trade. They were held for three hours before being released without charge. On January 11, the ruling party KANU headquarters issued a statement stating that the Law Society of Kenya and the *Daily Nation* were misleading the public by conveying the views of the political opposition. On April 28, government officials stormed the premises of the printer Colourprint Ltd., which prints some of the independent publications, and dismantled its printing machines.

International journalists are not exempt from government censorship. On February 17, 1995, the government canceled a licence issued to a British Channel 4 television crew which had come to film a documentary on tourism and travel in Kenya. Three reels of film were seized by the government. In April, President Moi threatened to expel the Nairobi correspondents of international papers *Time*, *Newsweek* and the *Washington Post* for writing articles which highlighted the government's human rights abuses. The journalists were made to apologize to the government.

Harassment of Opposition Politicians

The government continues to harass and intimidate the political opposition. Numerous opposition members complain of disruption of their meetings by police or local authorities, as well as the denial of licenses to hold meetings without cause or right of appeal. Under Kenyan law, a license must be obtained in advance from the local district commissioner. This discretionary power is being used to prevent opposition party members from holding public meetings of any kind. The government is also cracking down against any sort of criticism of its policies. On February 13, 1995, President Moi ordered that anyone who insulted him would be arrested.³⁰ The constant harassment of the political opposition prompted the Catholic Bishops to comment in a pastoral letter that:

The consistent thwarting of political rallies and meetings, all but KANU ones, must have the disastrous effect of driving the opposition underground. The treatment of non-KANU political activities violates the basic rules of democracy and of constitutional and human rights.³¹

Some incidents of government harassment of opposition members in 1995 include the following:

- On January 15, several opposition Members of Parliament were detained, including Njenga Mungai, Charles Liwali Oyondi and Francis John Wanyange. They were arrested in Longonot as they were about to attend a church service for victims of an ethnic clash incident that had occurred on January 10 at Mai Mahiu in the Rift Valley. They were charged with promoting "warlike" activities and "uttering words with a seditious intent." On January 20, they were denied bail. In mid-February, the charges were dropped.
- On January 24, police broke up a peaceful gathering to mark the anniversary of the late opposition politician Oginga Odinga.
- On February 5, armed administration police barred opposition politicians James Orengo and Otieno Mak'Onyango from attending a church function. The policemen threatened to tear gas the congregation, forcing the clergy to end the service prematurely.
- On February 16, Member of Parliament Linus Alouch Polo was arrested and charged with sedition for allegedly calling the government "Satan's government."
- On February 16, parliamentarian Peter Anyang Nyong'o was detained and interrogated by police regarding a statement he allegedly made expressing doubt about recent government assertions regarding a guerrilla movement in Kenya.
- On February 19, Member of Parliament Charles Lwali Oyondi was detained by police for several hours and his home was searched.
- In March, Molo parliamentarian, John Njenga Mungai, was charged in a Nakuru court with sedition. While in custody, he became ill and was hospitalized. He was chained to his bed throughout his hospitalization.
- Six members of Parliament from Kiambu district were warned by the government that they would be arrested unless they reported to the police about a meeting they had held.
- The trial of Koigi wa Wamwere, a former MP and the founder of a human rights organizations, and three others continues. The four are on trial for allegedly having launched a raid on a police station. The trial has been in progress

since April 1994. If convicted, the four men face a death sentence for attempted robbery. Human Rights Watch/Africa shares the fears of others that these charges are politically motivated and that the trial does not conform to international standards. In January, the police stormed the home of Koigi's mother and dispersed a mass being held to mark the first anniversary of the death of his father. On May 22, police detained two members of Koigi's legal defense team--opposition politician Paul Muite and Mirugi Kariuki, two journalists from the Norwegian daily *Aftenposten*, an international trial observer from the International Commission of Jurists, and an office clerk and driver. They were all charged with taking illegal photographs of a police station, assaulting a police officer and resisting arrest. They were released on bail.

- On April 4, police arrested and detained five opposition figures for six hours before releasing them uncharged. The five, including two opposition members of parliament, were members of the banned nongovernmental organization Mwangaza Trust. The raid took place at the Mwangaza offices in Nairobi. Six trustees of the deregistered Mwangaza were arrested: Paul Muite, MP for Kikuyu; Kiraitu Murungi, MP for Imenti South; Robert Shaw; Wachira Maina; the Trust's executive officer, Ntai wa Nkuraru; and Stanley Angaine, were arrested at the trust's offices. The trustees had gathered in their offices to discuss a judicial ruling on the banning.
- On March 18, six opposition members of parliament, George Nyanja, John Michuki, Stephen Ndichu, Robert Mungai, Henry Ruhiu and Njeru Ndwiga, were arrested in Embu as they held a "meet-the-people" tour in the town.
- In May, President Moi accused members of the political opposition and Italian businessmen of plotting a violent coup, a statement that was swiftly protested by the Italian Embassy. The *Kenya Times*, a government-run newspaper, went further, asserting in a front-page article that the opposition party had sought financial backing from the Klu Klux Klan. It charged that Klan members were present at a luncheon attended on May 25 by American and British businessmen and diplomats as well as opposition member Richard Leakey, a Kenyan of European origin. American and British diplomats immediately protested the allegations in a letter to the editor of the *Kenya Times*. The government has not produced any evidence of its allegations.
- In early May, top members of the Kenyan opposition announced that they were founding a new political party-Safina. Safina's application for registration under the Societies Act has been pending since June 20, 1995. However, President Moi and several ruling party politicians have spoken out against its registration. On June 23, the Attorney-General published a bill, which, if enacted into law, will severely restrict the formation, registration and functioning of both new and existing opposition parties. One founding member of Safina, conservationist Richard Leakey, a Kenyan of English origin, was denounced by President Moi as a racist colonialist. Shortly after, one hundred armed Maasai stormed the Leakey home demanding the departure of "the colonialist."

The Role of the International Community

In December 1994, at the last consultative group meeting, Kenya's bilateral and multilateral donors expressed satisfaction with Kenya's economic and human rights record. As a result, U.S. \$800 million in new commitments were pledged. In the closing statement the donors noted "the positive developments over the past year with respect to the democratization process, ethnic tensions and human rights issues."

However, the deterioration in the situation since December 1994 has indicated that this rosy assessment was premature. Some donors have already expressed their dissatisfaction with the situation. Germany announced that it was cutting its aid levels and would only offer only DM49 million for 1995-6 purely for technical cooperation --compared to the DM138 it had pledged in 1993-4. Denmark has also declined to release DKr 180 million for health projects because of doubts about human rights and government accountability. Both Denmark and Japan have noted that continuing assistance will depend on radical improvements in Kenya's political and economic record.

However, other countries have been less willing to link aid to human rights improvements. The United Kingdom, in particular, has been responsible for blocking European Union efforts to condition aid to Kenya. Britain, with aid payments of 31 million pounds sterling for 1995 ranks among Kenya's leading bilateral donors. Up to two billion pounds sterling is invested in Kenya.

The United States, previously outspoken on the need for Kenya to improve its human rights record, has also been reluctant to criticize the government's human rights record publicly or to take the lead in calling for respect for human rights. In 1995, the U.S. government plans to give nearly \$20 million.

RECOMMENDATIONS

To the Kenyan Government

- The government must cease its policy of ethnic persecution and provide additional and adequate security in order to enable those displaced by its policy of ethnic persecution to return to their land.
- Continuing and past attacks on ethnic grounds should be thoroughly investigated and charges brought where there is evidence against individuals alleged to be directly responsible for killings and destruction of property. In all cases, the criminal law must be applied without regard for ethnic group, political party or other status.
- Police and KANU officials responsible for brutality and harassment of the displaced must be disciplined for their actions.
- Displaced people who were forcibly dispersed should be returned to the areas they were taken from. Where legitimate reasons for relocation exist, adequate alternative sites should be provided in advance.
- Any action on resettlement of the displaced must be conducted in full cooperation and consultation with the government's implementing partner, UNDP, and local relief and church organizations.
- Government intimidation of the independent press must cease.
- The banning orders against the organizations Clarion and Mwangaza and the magazines *Nuru* and *Inooro* should be rescinded.
- Attacks on the Legal Aid Center and *Finance* magazine should be fully investigated and those responsible prosecuted.
- Government harassment of opposition politicians must cease.

To Donor Governments

- Donor nations should link disbursement of non-humanitarian aid to the Kenyan government's performance on good governance and human rights criteria once again given the deterioration in the situation. In particular, the Moi government should be called on to demonstrate its effective commitment to ending ethnic persecution and resettling the displaced population; to allowing free political activity for all opposition parties; and to respecting the rights of Kenyans to freedom of movement, association, assembly and expression.
- Foreign governments should maintain a consistent and unequivocal human rights message to the Kenyan government.

Foreign governments should publicly raise human rights concerns with the Kenyan government and call for the government to act on these concerns.

- Governments and international relief organizations giving aid to Kenya should continue to consult and cooperate with the local nongovernmental community in distributing relief to victims of ethnic persecution outside government channels.

To UNDP

- UNDP should refuse to continue the joint reintegration program for the displaced until the Kenyan government agrees to the following conditions: prior notification of any government action for the displaced; advance assessment by UNDP of any areas designated by the government for resettlement; free access to the displaced at all times; UNDP-supervised movement of people with advance notice to a reasonable area; no government vetting of the displaced without UNDP presence; no government harassment of the displaced; no forcible destruction of camps; return of the forcibly displaced persons to their areas; and disciplinary actions to be taken against government officials who were involved in mistreatment of the displaced at Maela.

This report was written by Binaifer Nowrojee, consultant, and edited by Michael McClintock, Deputy Program Director.

Human Rights Watch/Africa

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Robert Kimzey, publications director; Jeri Laber, special advisor; Gara LaMarche, associate director; Lotte Leicht, Brussels Office Director; Juan Méndez, general counsel; Susan Osnos, communications director; Jemera Rone, counsel; Joanna Weschler, United Nations representative; and Derrick Wong, finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa. Janet Fleischman is the Washington director; Alex Vines is the research associate; Kimberly Mazyck is the associate; Alison DesForges, Kirsti Lattu, Bronwen Manby, Binaifer Nowrojee and Lynn Welchman are consultants. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.

¹ The political opposition consisted of three groups: FORD-Kenya and FORD-Asili (splinter groups of the coalition which had called for the end of one-party rule in Kenya, known as the Forum for the Restoration of Democracy (FORD) which had split during the course of the election campaign largely on ethnic lines), and the Democratic Party (DP), a KANU breakaway party. The election was also marred by government harassment of the opposition during the campaign and there were widespread allegations of government manipulation of the election process. However, the Commonwealth Observer Group at the elections concluded that "Despite the fact that the whole electoral process cannot be given an unqualified rating as free and fair...we believe that the results in many instances directly reflect, however imperfectly, the expression of the will of the people." Commonwealth Secretariat, *The Presidential, Parliamentary and Civic Elections in Kenya: The Report of the Commonwealth Observer Group*, (Commonwealth Secretariat, London: 1993), p. 40.

² See Africa Watch, *Divide and Rule: State Sponsored Ethnic Violence in Kenya* (New York: Human Rights Watch,

November 1993); Human Rights Watch/Africa, "Multi-Partyism Betrayed in Kenya: Continuing Rural Violence and Restrictions on Freedom of Speech and Assembly," *A Human Rights Watch Short Report*, vol. 6, no. 5 (July 1994); and Human Rights Watch, *Playing the "Communal Card": Communal Violence and Human Rights* (New York: Human Rights Watch), April 1995, p. 97.

³ Eyewitness reports of the violence, which began in October 1991, were remarkably similar. Farms occupied by Kikuyus, Luos and Luhyas were attacked by groups of "Kalenjin warriors" as they came to be known, or in some areas by Maasai. Non-Kalenjin houses were burnt and their owners driven away. The attackers have often dressed in an informal uniform of red or black t-shirts, their faces marked with clay in the manner of initiations candidates, and armed with bow and arrows or *pangas* (machetes). To a lesser extent, retaliatory attacks against Kalenjin farmers occurred, although these have been less organized and more opportunistic in character. Africa Watch, *Divide and Rule*, pp. 19-42.

⁴ The Kalenjin, which make up about 11 percent of the Kenyan population, consist of a number of smaller groups speaking Nilotic languages and sharing similar cultural traditions. In precolonial times, the Kalenjin were largely pastoralist and the various subgroups had few political links; the sense of common "Kalenjin" identity was born as a result of British colonial policies and has strengthened since independence. President Moi is a Kalenjin. The Maasai, which make up approximately 1.5 percent of the population, are also Nilotic-speaking pastoralists, originally grazing their animals over a wide area and later restricted by the British to a reserve along the border with then Tanganyika (Tanzania).

⁵ The Kikuyu, the largest ethnic group in Kenya, make up about 21 percent of the population. The Kikuyu are of a Bantu-language group, and were the group most immediately and drastically affected by colonization, both by the alienation of their land and also in gaining the most rapid access to education and thus political influence. The Luo, which make up approximately 13 percent of the population, speak a Nilotic language close to the languages of the Kalenjin than that of the Kikuyu. The Luhya, which make up approximately 14 percent of the population, consist of a number of smaller groups which were grouped together during the colonial period.

⁶ Republic of Kenya, *Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other Parts of Kenya* (Kenya: Sept. 1992); Inter-Parties Symposium I Task Force Report, Kenya, June 11, 1992; National Council of Churches of Kenya, *The Cursed Arrow: Organized Violence Against Democracy in Kenya*, Kenya, April 1992; and the National Election Monitoring Unit, *Courting Disaster*, Kenya, April 29, 1993.

⁷ See Africa Watch, *Divide and Rule*.

⁸ The Preservation of Public Security (Molo, Burnt Forest and Londiani areas) Regulations, 1993. *Kenya Gazette*, supplement no. 60, September 17, 1993.

⁹ Human Rights Watch/Africa, "Multipartyism Betrayed in Kenya."

¹⁰ "Doctors Remove Arrow from Thessalia Victim," *Standard*, January 9, 1995.

¹¹ "Twenty Villagers Arrested Over Curfew," *Daily Nation*, February 24, 1995.

¹² "Kolongolo Flare Up: 800 Evicted," *The Clashes Update*, The National Council of Churches of Kenya, Christian Outreach and Rural Development Services (Nairobi: National Council of Churches of Kenya), no.26, March 31, 1995.

13 British colonization of the area that is now Kenya caused a major disruption of existing landholding patterns in the present-day Rift Valley Province, due to the large influx of white settlers. A succession of land regulations between 1899 and 1915 expropriated much of the best land for the use of European farmers, and restricted Africans to "native reserves" a fraction of the size of the land they had previously occupied. Largely pastoralist groups, such as the Maasai and the various sub-groups of the Kalenjin, were prevented from using their traditional grazing grounds; cultivators, such as the Kikuyu, were restricted to areas too small to sustain the subdivisions of land, dictated by inheritance practices, as population grew. Squatter labor for these farms was subsequently recruited by the British. Although several ethnic groups were represented among the squatters, it was overwhelmingly landless Kikuyu from the overcrowded reserves in Central Province that took this opportunity. See, for example, Tabitha Kanogo, *Squatters and Roots of Mau Mau 1905 - 1963* (Nairobi: Heinemann Kenya Ltd, 1987).

14 *Majimboism* is a form of ethnic regionalism that was promoted by the Kenya African Democratic Union (KADU) at independence. KADU's support came mainly from the minority ethnic groups of Kenya, including the Kalenjin, and President Moi was one of the party's leaders. KADU voluntarily dissolved itself into KANU soon after independence, and the idea of majimboism was dropped. However, KANU politicians close to Moi, from the Kalenjin and Maasai ethnic groups, revived the calls for majimboism as a way of countering the demand for multipartyism in Kenya. Under the cover of a call for regional autonomy, prominent MPs have demanded the forcible expulsion of all ethnic groups from the Rift Valley except for those pastoral groups- Kalenjins, Maasai, Turkana and Samburu- that were on the land before colonialism. While many Kenyans have no quarrel with the concept of regionalism, *per se*, they view these calls as nothing less than ethnic persecution. Africa Watch, *Divide and Rule*, p.12.

15 Government of Kenya/UNDP, *Program Document: Program for Displaced Persons*, Inter-agency joint programming (working document), October 26, 1993.

16 Letter from David Whaley, UNDP Regional Representative to Mr. W. Kimilat, Permanent Secretary, Kenyan Government, December 27, 1994.

17 "Let Bodies, Individuals, Assist Maela Victims," *Daily Nation*, February 27, 1995.

18 Interview with foreign diplomat (name withheld by request), quoting from David Whaley's presentation at a National Coordinating Committee for Displaced Persons meeting, January 11, 1995.

19 *From Relief to Rehabilitation, Reconstruction and Reconciliation*, draft report to the National Coordinating Committee for Displaced Persons by John Roggee, UNDP consultant, September 1994, p.2, subsection 4 and 5. In that report, UNDP stated "[f]or the whole of western Kenya, an optimistic estimate might be that one-third of the affected population is now back on its land and in the process of rebuilding its houses... A much larger proportion, perhaps as much as half of the total displaced in western Kenya, are in a transitional state of return."

20 The National Coordinating Committee for Displaced Persons is an inter-agency working group created in July 1994 to bring together government representatives, bilateral and multilateral donors, religious institutions as well as local and international nongovernmental organizations to discuss relief and reintegration efforts for the displaced on a regular basis.

21 U.S. Committee for Refugees, *1995 World Survey Report* (Immigration and Refugee Services of America, Washington: 1995), p.62.

22 Interview with David Whaley, UNDP regional representative and Killian Kleinschmit, UNDP technical advisor on the ethnic violence in Kenya, January 17, 1995, and "UNDP Official Disputes Resettlement Story," *The Clashes*

Update, The National Council of Churches of Kenya, Christian Outreach and Rural Development Services (National Council of Churches, Nairobi), no. 21, October 27, 1994, p. 1.

23 Interview with foreign diplomat (name withheld by request), March 1995.

24 All information on this incident was compiled through the following interviews as well as secondary sources: Interview with foreign diplomat (name withheld by request), January 5, 1995. Interview with Catholic priest (name withheld by request), January 6, 1995. Interview with David Whaley, UNDP regional representative and Killian Kleinschmit, UNDP technical advisor on the ethnic violence in Kenya, January 17, 1995.

25 "Police Brutality at the Kirigiti Stadium," *Standard*, January 11, 1995.

26 "Govt Deregisters Law Work Body," *Daily Nation*, February 20, 1995.

27 "Kenyan President Pledges to Stamp Out Corruption," *Financial Times*, November 18, 1994.

28 "Five Arrested Opposition Activists Released," *Agence-France Presse*, April 5, 1995 as quoted in FBIS-AFR-95-067, April 7, 1995, p. 6.

29 "Catholic Priest and Seminarians in Court," *Daily Nation*, February 28, 1995.

30 "Moi Orders Arrest of Those Who Insult Him," *Daily Nation*, February 14, 1995.

31 "The Catholic Bishop' Pastoral Letter," as quoted in *The Economic Review*, April 10-16, 1995, p. 30